

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

LLOYD FORREST LOWE,

*Petitioner,*

v.

NATHANIEL QUARTERMAN,

*Respondent.*

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Civil Action No. G-08-0064

**MEMORANDUM OPINION AND ORDER**

Pending before the Court in this *pro se* state inmate section 2254 habeas case is respondent's motion to dismiss for failure to exhaust. (Docket Entry No. 19.) In the Court's order of April 6, 2009, petitioner was ordered to file a response to any motion to dismiss within thirty days of service of the motion. The certificate of service attached to the motion to dismiss reflects that respondent served petitioner a copy of the motion on July 6, 2009. To-date, and despite expiration of a reasonable time in excess of thirty days, petitioner has failed to respond to the motion to dismiss.

In the motion to dismiss, respondent reports that petitioner's application for state habeas relief was pending in state court at the time petitioner filed the instant petition, and that it remains pending in state court under *Ex parte Lowe*, Application No. 66,085-03. Respondent asserts that petitioner has not exhausted his state court remedies as required by

28 U.S.C. § 2254(b)(1). As he has not responded to the motion, petitioner does not dispute this allegation or present reasons why this case should not be dismissed for failure to exhaust.

Accordingly, the record before this Court reflects that petitioner failed to exhaust his state court remedies prior to filing this lawsuit. The motion to dismiss (Docket Entry No. 19) is **GRANTED** and this case is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust. A certificate of appealability is **DENIED**. Any and all pending motions are **DENIED AS MOOT**.

The Clerk will provide a copy of this order to the parties.

Signed at Houston, Texas, on this the 18<sup>th</sup> day of August, 2009.

  
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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE